

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

BRIAN KERRY O'KEEFE,

Petitioner,

vs.

SHERIFF DOUG GILLESPIE, *et al.*,

Respondents.

2:11-cv-02109-JCM-VCF

ORDER

This represented habeas matter comes before the court on petitioner's proper person motion (#42) for the court to act sua sponte and address an alleged docketing error and motion (#43) for production of transcripts at government expense.

The court states now for the third time that petitioner may not file any proper person papers while represented by counsel. Petitioner does not have a constitutional right either to pursue a matter both through counsel and in proper person or indeed to pursue a matter in proper person without counsel. *See, e.g., United States v. Bergman*, 813 F.2d 1027, 1030 (9th Cir.1987); *United States v. Halbert*, 640 F.2d 1000, 1009 (9th Cir.1981); *cf. Martinez v. Court of Appeal of California*, 528 U.S. 152 (2000)(a criminal defendant has no right of self-representation on direct appeal). As the court also has stated previously, the appellate court's orders regarding petitioner's proper person filings in that court pertain to filings in that court, not in the district court.

The court further notes that the current motions do not pertain to a counsel issue, and the court in any event already has ruled that petitioner must pursue any issues in that regard in the court of appeals. *See* #32.


1 Having to repeat the same very simple point three times is enough. The court will
2 direct the clerk to designate petitioner – in proper person – as a restricted filer on the docket
3 sheet and to return unfiled to petitioner – with a copy to petitioner’s counsel – all papers
4 submitted in this action in proper person. What relief is to be requested in the district court
5 is a matter to be determined by petitioner’s appointed counsel. If petitioner should seek in
6 proper person to present a paper in the district court regarding a counsel issue, past practice
7 by the federal public defender in numerous actions as to such issues readily confirms that the
8 public defender promptly will file a notice in the record that such relief is being sought by the
9 petitioner in proper person. The court then will proceed as then is warranted.

10 IT THEREFORE IS ORDERED that petitioner’s proper person motions (## 42 and 43)
11 are STRICKEN.

12 IT FURTHER IS ORDERED that petitioner’s counsel shall forward a copy of this order
13 to petitioner.

14 IT FURTHER IS ORDERED that the clerk shall designate petitioner – when seeking
15 to proceed in proper person only – as a restricted filer in this action and shall return all papers
16 submitted in proper person in this action by petitioner to petitioner, with a copy to petitioner’s
17 counsel. To be clear, the restricted filer designation applies only to this action to papers
18 tendered in proper person for filing in this action.

19 DATED: August 19, 2014.

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23 JAMES C. MAHAN
24 United States District Judge
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